

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2007

CORAM

THE HON'BLE MR. JUSTICE P.D. DINAKARAN

Civil Miscellaneous Appeal No.3599 of 2006

United India Insurance Co. Ltd.,
Mettur Road, Erode. ... Appellant/3rd Respondent

Vs.

1. A. Chandran ... 1st Respondent/Petitioner

2. Subramaniam

3. K. Subramaniam

(R2 & 3 ex parte before lower court) ... Respondents 2 and
and hence notice may be dispensed with 3/Respondents 1 and 2

Appeal under Section 173 of M.V. Act against the judgment and decree dated 19.07.2004 made in M.C.O.P.No.131 of 2003 on the file of the Motor Accidents Claims Tribunal (I Additional Sub Court), Erode.

For Appellant : Mr. N. Vijayaraghavan

J U D G M E N T

The above appeal is directed against the judgment and decree dated 19.07.2004 made in M.C.O.P.No.131 of 2003 on the file of the Motor Accidents Claims Tribunal (I Additional Sub Court), Erode.

2. Brief facts leading to the filing of this appeal are that the first respondent, on 07.02.1999, sustained multiple grievous injuries, in a motor accident as a result of collision of car driven by the second respondent, insured with the appellant. The first respondent claimed a compensation of Rs.15,00,000/- and the Tribunal awarded Rs.9,75,000/- towards compensation. Aggrieved by the same, the Insurance Company has preferred the above appeal.

3. The learned counsel for the appellant Insurance Company raised the following contentions:

(i) the driver of the vehicle was not having a valid licence at the time of the accident and therefore there was violation of the conditions of the insurance policy and hence the Insurance Company is not liable to pay any compensation to the claimant;

(ii) though the trial judge has observed in the order that the appellant/insurance company can recover the award amount from the owner of the vehicle, the same does not find place in the decree;

(iii) the quantum of compensation awarded by the Tribunal is excessive; and

(iv) the award of interest at 9% is contrary to the decision of the Supreme Court reported in 2005(4) Supreme 87 and

4.1. With regard to first two contentions, it is trite law that the insurer cannot avoid the liability to answer the claim of the third parties, but the insurer is at liberty to proceed against the owner of the vehicle and recover the amount paid by it after paying the claimants/appellants vide 'NEW INDIA ASSURANCE COMPANY LIMITED, SHIMLA -VS- KAMALA AND OTHERS'{2001 (4) S.C.C.342}, 'UNITED INDIA INSURANCE CO., LTD -VS- LEHRU AND OTHERS{2003 (3) SCC 338}, 'NATIONAL INSURANCE CO. LTD., BHAVANI -VS- SAMIYATHAL AND OTHERS' { 2003(1) L.W.539 (D.B)} and 'KUMAR -VS- NATIONAL INSURANCE CO., LTD.' {2002 (4) L.W.691 (D.B)}.

4.2. In a decision reported in 2004 (ACJ) 1 (NATIONAL INSURANCE CO. LTD., -vs- SWARAN SINGH AND OTHERS), the Apex Court has held as follows.

"96. It is, therefore, evident from the discussions made hereinbefore that the liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time.

97. Apart from the reasons stated hereinbefore the doctrine of stare decisis persuades us not to deviate from the said principle.

98. It is well settled rule of law and should not ordinarily be deviated from [SEE BENGAL IMMUNITY CO. LTD., V. STATE OF BIHAR (1955) 2 SCR 603-632L; KESHAV MILLS CO. LTD V. COMMISSIONER OF INCOME-TAX, BOMBAY NORTH (1965) 2 SCR 908 AT 921-922; UNION OF INDIA V. RAGHUBIR SINGH (1989) 3 SCR 316 AT 323, 327, 334; GANNON DUNKERLEY AND CO. V. STATE OF RAJASTHAN (1993) 1 SCC 364; BELGAUM GARDENERS CO-OP. PRODUCTION SUPPLY AND SALE SOCIETY LTD., V. STATE OF KARNATAKA, 1993 SUPP (1) SCC 96 AND HANUMANTAPPA KRISHNAPPA MANTUR V. STATE OF KARNATAKA,

1992 SUPP (2) SCC 213].

99. We may, however, hasten to add that the Tribunal and the Court must, however, exercise their jurisdiction to issue such a direction upon consideration of the facts and circumstances of each case and in the event such a direction has been issued despite arriving at a finding of fact to the effect that the insurer has been able to establish that the insured has committed a breach of contract of insurance as envisaged under sub-clause (ii) of clause (a) of sub-section (2) of section 149 of the Act, the insurance company shall be entitled to realise the awarded amount from the owner or driver of the vehicle, as the case may be, in execution of the same award having regard to the provisions of sections 165 and 168 of the Act."

4.3. In a decision of the Supreme Court in National Insurance Co. Ltd. vs. Baljit Kaur, reported in 2004 (1) CTC 210, it was observed by the Supreme Court in the following words:

"The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect..."

We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer"

4.4. In a recent decision of a Division bench of this Court in United India Insurance Co. Ltd. v. P.Jaya, reported in 2006 (1) CTC 173, it is held as follows:

"Following the decisions of the Supreme Court referred to above, we direct that the appellant Insurance Company is liable to pay the compensation amount to the claimants as awarded by the Tribunal and to recover the same from the owner in execution

proceedings, without filing any suit therefor."

4.5. Following the decisions cited supra, the appellant Insurance Company is directed to pay the compensation amount to the first respondent/claimant as awarded by the Tribunal and to recover the same from the owner in execution proceedings, without filing any suit therefor.

5.1. As regards the quantum of compensation;
the first respondent/injured was aged about 48 years at the time of accident. In the accident that took place, the first respondent suffered multiple injuries through out the body. The Doctor who examined him had fixed the disability at 100%. Ex.P20 is the Disability Certificate.

5.2. The Tribunal, taking into consideration the injured was working as sales tax consultant at the time of accident and the documents produced by him, viz. Ex.P15 - license for working as sales tax consultant, Ex.P16 vakalat seeking permission to file sales tax form and Ex.P17 various receipts showing payment of sales tax, the Tribunal had fixed the monthly income of the first respondent at Rs.5,000/-, and arrived at the loss of future income as Rs.6,50,000/-. I am of the view that the Tribunal is justified in fixing the income of the first respondent at Rs.5,000/- and the loss of future income at Rs.6,50,000/-.

5.3. Taking into consideration the disability fixed at 100%, the Tribunal has awarded Rs.1,50,000/- towards permanent disability and Rs.25,000/- towards pain and suffering, which, in my view, is justified.

5.4. The Tribunal, taking into consideration Exs.P8 to 14, 18, 19, 22 and 23, viz., various medical bills, x-ray reports and scan reports, has awarded Rs.1,50,000/- towards medical expenses, which cannot be said to be excessive.

6.1. As regards interest, the Supreme Court in TAMIL NADU STATE TRANSPORT CORPORATION LTD. v. S.RAJAPRIYA & ORS (2005 (4) Supreme 87), wherein the interest was fixed at 9% per annum by the Tribunal, reduced the interest to 7.5% per annum taking note of the then prevailing rate of interest in bank deposits.

6.2. In view of the above decision, I am of the view that it would be just and proper to reduce the interest awarded by the Tribunal to 7.5% per annum.

7. The appeal is disposed of in the following terms:

The appellant Insurance Company is liable to pay the compensation amount to the first respondent/claimant as awarded by the Tribunal with interest @ 7.5% from the date of filing the original petition till the date of payment and to recover the same from the owner of the vehicle in execution proceedings.
ATR

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The I Additional Subordinate Judge
Motor Accident Claims Tribunal
Erode.

+ one cc to M/s. M.B. Gopalan, Advocate sr no. 3692

GK(Co)
NM(14.03.07)

C.M.A.No.3599 of 2006

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